

In the
United States Court of Appeals
For the Ninth Circuit

JEFFERSON STANDARD LIFE IN-
SURANCE COMPANY, a corporation,
Appellant,

vs.

UNITED STATES OF AMERICA, H.
L. BYRAM, County Tax Collector of
Los Angeles County, and GEORGE T.
GOGGIN, Trustee of Stockholders
Publishing Company, Inc., a corpora-
tion, bankrupt,
Appellees.

Brief of Appellee, H. L. Byram, County
Tax Collector of the County of
Los Angeles

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No. 15349

**Brief of Appellee, H. L. Byram, County
Tax Collector of the County of
Los Angeles**

INTRODUCTION

This case involves the "circular priority" of liens, which necessarily includes a study of the liens making up the circle, that is, the priority of a county tax lien over a private mortgage lien and the priority of tax liens of the United States. The question of post-bankruptcy interest on secured obligations of the bankrupt is also raised.

By "circular priority" of liens we mean simply this: There are three lien claimants entitled to share in a fund not large enough to pay them all, each of the three being prior to the next one until the circle is completed. The lien of the County Tax Collector is ahead of that of the Mortgagee-Appellant, which is ahead of the lien of the United States, which in its turn claims priority over the County's tax claim.

The Bankruptcy Court ordered the sale of certain real and personal property free and clear of all liens, the liens being transferred to the fund produced from the sale. But the resulting fund is not large enough to pay all such lien claimants in full. The County Tax Collector maintains that his claim is prior to all private liens regardless of date. The holder of the trust deed and chattel mortgage (Appellant, Jefferson Standard Life Insurance Company) is conceded to be ahead of the tax claim of the United States (being a "mortgagee" within the meaning of Section 3672, I.R.C., now 26 U.S.C. Sec. 6323) and also prior in point of time to the United States' liens.

Appellant, Jefferson Standard, the mortgagee, does not concede that it is junior to the County's tax lien, and the County only with hesitation and some reservations and exceptions admits that it may be junior to the Federal tax liens. However, all parties agree that interest should be allowed on the secured claims up to the date of payment, not merely to the date of bankruptcy.

The Referee, the Honorable David B. Head, solved the problem of circular liens by ordering the lien of Jefferson Standard paid in full (except for interest), and the balance of the fund paid to the United States. Then he ordered the Appellant to pay the prior lien claim of the County Tax Collector out of the fund thus set aside for Appellant, Jefferson Standard, the mortgagee with appropriate provisions in case additional funds should be discovered. This Appellee submits that this solution is the fairest and most equitable that has been suggested and is fully supported by Federal and state law. The United States District Court affirmed this action, Honorable William M. Byrne, District Judge (Tr., pp. 39-40).

ARGUMENT

I.

**THE LIEN OF THE COUNTY OF LOS ANGELES
FOR REAL AND SECURED PERSONAL PROP-
ERTY TAXES IS PRIOR TO ALL PRIVATE
LIENS REGARDLESS OF WHEN THE PRI-
VATE LIEN ATTACHES.**

The County's tax lien is therefore superior to and entitled to priority over the lien of the trust deed and chattel mortgage of Appellant, Jefferson Standard Life Insurance Company.

Dougherty v. Henarie (1873), 47 Cal. 9, 14;
People v. Central Pacific R. R. Co. (1890), 83
Cal. 393;
Courtney v. Byram (1942), 54 Cal. App. 2d
769, 772;
California Constitution, Article XIII, Sec-
tion 1.

In *Courtney v. Byram*, 54 Cal. App. 2d 769 at 772, the court said:

“By statutory provision, as indeed by the harsh law of necessity, taxes have been made a first lien upon property. They are a primary obligation of the citizen, and the flow of this ‘life blood of government’ may not be interrupted. Generally, therefore, the obligation to pay taxes is superior to the obligation of private debts.”

The County's lien is for the general property tax, secured by lien on specific real estate, the backbone

of the financial structure of local government. The many cases arising from street bond foreclosures, special assessments and general liens, now on a parity with each other, are confusing. (*Monheit v. Cigna*, 28 Cal. 2d 19, 27, 168 P. 2d 965.) Section 3900 of the Revenue and Taxation Code places these liens on a parity. But no reference is made to private liens, such as the mortgage of Jefferson Standard. We submit that the status of private mortgage liens has been so well established that it has not been thought necessary to make specific reference to them.

Even in the absence of any statute, general tax liens prevail over special assessments and private liens.

In *La Mesa etc. Irrigation Dist. v. Hornbeck* (1932), 216 Cal. 730 at 735, 17 P. 2d 143, the court said:

“First, it is well settled that in the absence of a statutory or constitutional provision a distinct priority exists in favor of general taxes over special assessments of every kind. (*Dougherty v. Henarie*, 47 Cal. 9; 26 R.C.L., p. 404, sec. 361; *State v. Board of Commrs.*, 89 Mont. 37 [296 Pac. 1].) The reason for this rule is well stated in *Robinson v. Hanson*, 75 Utah, 30 [282 Pac. 782, 784], as follows: ‘We are not dealing with claims of intrinsic equality. The claim for the necessary support of government is a higher obligation than the demand for the costs of a local improvement, even though the latter has *quasi* public features. The first and paramount necessity for social order, personal liberty, and private property is the maintenance of civil government; and government can-

not exist without revenues. The necessity and importance of preferring the lien for general taxes over other claims are so impelling that the priority of the sovereign claims of the state will not be depreciated or denied without warrant from the legislature in clear and unmistakable terms; and we find no such warrant from the legislature. The provisions of the statute upon the subject are not inconsistent with the priority of the right of the state to its necessary revenues.' "

The lien of the County Tax Collector is for the usual annual general property tax which becomes a lien on the first Monday in March for the ensuing fiscal year. It includes general and special taxes of all taxing agencies who have their taxes assessed and collected by County officers. (*Knox-Powell-Stockton Co.*, [1939, C. A., 9th], 100 F. 2d 999.) All property owners and investors are familiar with it; it is usually taken care of in escrow, often without changing the purchase price. Jefferson Standard could have checked the record or subscribed to a tax service that would. It could then have seen that its mortgagor paid the tax when it became due November 1, 1954, or at least before delinquency, December 10, 1954, either date being prior to bankruptcy herein. The County's tax lien is for \$15,384.10 or about two and a half per cent of the total liens claimed by Jefferson Standard and the United States (Tr., pp. 28 and 29).

II.

**THE PROBLEM OF CIRCULAR PRIORITIES WAS
CORRECTLY SOLVED BY THE REFEREE
HEREIN.**

The County Tax Collector claims a lien superior and prior in right to the trust deed and chattel mortgage of Jefferson Standard. It is conceded that Jefferson Standard's lien is entitled to priority over that of the United States of America. The United States claims its liens are entitled to priority over the County's tax lien. The circle could continue indefinitely, each claimant being entitled to priority over the next. This the Referee solved by ordering payment in full (except interest) to Jefferson Standard, the balance of the fund being paid over to the United States, which gives the United States all it could legitimately hope to receive under the circumstances. Then the Referee ordered the payment of the County tax claim by Jefferson Standard out of its portion of the award. This in turn gives Jefferson Standard all that it could legitimately expect to receive, that is, its claims in full, less what is clearly its obligation, that is, payment of the County's tax claim.

This or a substantially similar plan was approved in the following cases:

Smith v. United States (July 28, 1953), Dist. Ct., Hawaii), 113 F. Supp. 702, 711-712;

Southern Ohio Sav. Bank v. Bolce (May 9, 1956), 165 Ohio St. 201, 135 N.E. 2d 382,

390-391; same case (January 24, 1955) 125 N.E. 2d 217;

Hopkins v. Eureka Coal Co. (1944), 33 Am. Fed. Tax Rep. 1627;

Ferris v. Chic-Mint Gum Co., 14 Del. Ch. 232, 124 A. 577;

Brown v. General Laundry Service (December 30, 1952), 139 Conn. 363, 94 A. 2d 10 (vacated by *U. S. v. City of New Britain* (February 1, 1954), 347 U.S. 81, 98 L. Ed. 520, 74 S. Ct. 367). Same case, April 4, 1955, Superior Court, 19 Conn. Sup. 335, 113 A. 2d 601, 603-605.

In the *Smith* case, *supra*, there were long lists of Federal and Territorial liens, a "trust chattel mortgage" for the benefit of creditors and miscellaneous other liens. The court ordered the prior United States liens paid first, the balance of the fund to be paid on the mortgage, but the Territorial liens to be paid out of funds set aside for the mortgage.

In the *Southern Ohio Savings Bank* case, *supra*, 135 N.E. 2d 382, 390-391, the court made a similar distribution, saying:

"Recognizing, however, the position which the federal Supreme Court has taken on the issues involved from the expressions of the court above quoted from the New Britain case and other cases, we are obliged to recognize the federal tax liens as having priority over local and state tax liens, as found by the Court of Appeals.

“The problem of the distribution of the funds in the instant causes remains to be considered. It is conceded that the mortgages and judgments are superior to the federal tax liens; that the federal tax liens are by this decision found to be superior to the local or state tax liens; and that the local or state tax liens are superior to the mortgage and judgment liens.

“In this revolving circle, some courts have preferred the mortgage, and with it the local tax lien, over the federal lien which is remitted to any proceeds of sale remaining. See *Ferris v. Chic-Mint Gum Co.*, 14 Del. Ch. 232, 124 A. 577; *Brown v. General Laundry Services, Inc.*, 53-1 U.S.T.C., paragraph 9272.

“But this plan of distribution fails to give the federal tax lien the priority of distribution to which, under the federal authorities, it is entitled. Another scheme of distribution, which was substantially adopted by the Court of Appeals in the instant causes, and which has sanction under some authorities as the best possible solution under the circumstances, calls for a setting aside of a fund equal to the total amount due to the mortgagees and judgment creditors under their liens which by federal statute have priority over the federal tax lien.

“This court is of the opinion that where, in a judicial sale of land incumbered by a state tax lien, a federal tax lien and other creditor liens, which latter liens are preferred by federal statute over the federal tax lien, the proceeds of the sale are insufficient to pay all such lien incumbrances

in full, there shall be set aside from the proceeds of the sale a fund equal to the amount of the creditor liens so preferred over the federal tax lien to the extent that the proceeds of sale are sufficient, out of which fund the state taxes shall first be paid, and the remainder of such fund shall be paid to creditor lienholders, whose lien are so preferred over the federal tax lien, according to their lien priority, and the remainder of the proceeds of sale, if any, shall be paid to the United States on its tax lien."

We submit that the Referee's decision herein is fair and equitable, as well as legally correct.

CONCLUSION

The lien of the County of Los Angeles for real and secured personal property taxes is entitled to priority over any private lien claim, including that of the Jefferson Standard Life Insurance Company. The lien of Jefferson Standard is admittedly prior to that of the United States, which in turn is alleged to be prior to the County's lien. The Referee properly solved the circular priority, which was ordered affirmed by the District Court, and should be affirmed by this Honorable Court, with costs to Appellee.

Respectfully submitted,

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